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MEDIA IV LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CONVERGENT MEDIA IV LLC, a Florida limited liability company,

Case No. 2:24-cv-00129  
**COMPLAINT**

**Plaintiff,**

V.

APERTURE MEDIA PARTNERS  
LLC, a Delaware limited liability  
company,

## Defendant.

## **COMPLAINT**

Plaintiff, Convergent Media IV LLC (“Convergent”) hereby sues Aperture Media Partners LLC (“Aperture”), and alleges:

## I. PARTIES, JURISDICTION, AND VENUE

1. Convergent is a Florida limited liability company, with its principal place of business in Florida.

2. Aperture is a Delaware limited liability company, with its principal place of business in Los Angeles, California.

3. Pursuant to Title 28 of the United States Code §1332(a)(1), and other applicable law, this Court possesses jurisdiction over this case the Parties are diverse

1 in that they are citizens of different states and the amount in controversy exceeds  
 2 \$75,000. The value of the object of the litigation exceeds \$128,034 based upon  
 3 Aperture's breaches, as more fully described below.

4       4. Pursuant to Title 28 of the United States Code §1331(a), venue is  
 5 proper in the Central District of California because a substantial part of the events  
 6 giving rise to the claims put forth herein occurred in the Central District of  
 7 California and Aperture is located in the Central District. Furthermore, pursuant to  
 8 the agreement between lenders, Aperture consented to participate in any legal action  
 9 with Convergent in the Central District of California.

10 **II. OVERVIEW OF CONTROVERSY UNDERLYING THIS ACTION**

11       5. This Complaint pertains to a controversy as to the allocation of  
 12 payments received by Aperture from MX2 Holdings, LLC (the "Borrower"), in  
 13 connection with a movie entitled "Maggie Moore(s)" (the "Film").

14       6. Aperture is a media finance and production company that focuses on  
 15 providing advisory services and entertainment financing for the production of films  
 16 and television series. Aperture advertises itself as a "one-stop shop," that provides  
 17 not only capital, but also a variety of other entertainment services such as  
 18 production, distribution, and advertisement.

19       7. Convergent is a special purpose entity formed to interface with  
 20 Aperture to participate in lending money to the Borrower for the production of the  
 21 Film. The Borrower received financing from both Convergent and Aperture for the  
 22 production of the Film.

23       8. The completion of the Film occurred with the assistance of Media  
 24 Guarantors Insurance Solutions, LLC ("MGIS"). MGIS specializes in providing  
 25 bonds to production companies to facilitate completion of the Films.

26 **III. THE LOAN AGREEMENT AND THE INTERCREDITOR**  
 27 **AGREEMENT**

28       9. On October 22, 2021, Aperture and the Borrower entered into a lending

1 relationship for the principal amount of \$7,366,638 (the “Loan Amount”). The  
 2 Loan Amount was to be used for the purpose of producing, completing, and  
 3 delivering the Film. The lending relationship is evidenced by a series of loan  
 4 documents, including the “Loan and Security Agreement” (the “Loan Agreement”),  
 5 executed between the Borrower and Aperture on October 22, 2021.

6       10. The Loan Agreement includes a list of authorized distributors  
 7 (collectively, the “Current Distributors”), based upon those distribution companies  
 8 with current distribution contracts with the Borrower (collectively, the “Distribution  
 9 Contracts”). The Current Distributors included both domestic and international  
 10 distribution companies with distribution territories all over the world.

11       11. The Loan Agreement also stated that the Film was to be produced by  
 12 both the Borrower and MX2 Productions Inc. (“MX2”). MX2 is a Florida  
 13 corporation that is affiliated with the Borrower. Pursuant to the terms of the Loan  
 14 Agreement, all production bank accounts that were maintained in connection with  
 15 the Film were to be maintained under the name of either MX2 or the Borrower.  
 16 MX2 was also responsible for acquiring certain copyrights necessary to obtain rights  
 17 to the screenplay that served the basis for the Film.

18       12. The Loan Agreement makes reference to the roles of other third parties,  
 19 including MGIS, in ensuring timely production and delivery of the Film to Aperture,  
 20 in the event of exigencies. The Loan Agreement provided that Endeavor Content,  
 21 LLC (the “Sales Agent”) would be engaged as the sales agent for the Borrower and  
 22 would be primarily responsible for the sales of the Film to the authorized  
 23 distributors. The responsibilities of MGIS, the Sales Agent, the Borrower, and  
 24 Aperture are more fully governed by the “Sales Agent Interparty Agreement.”

25       13. Though Convergent is not a party to the Loan Agreement, the Loan  
 26 Agreement contemplates that Convergent would provide funding for a portion of the  
 27 Loan Amount. Accordingly, on October 22, 2021, Convergent and Aperture  
 28 executed the “Agreement Between Lenders” (the “Intercreditor Agreement”). A

1 true and correct copy the Intercreditor Agreement is attached hereto as Exhibit “1.”

2       14. The Intercreditor Agreement states that \$900,000 of the Loan Amount  
 3 would be funded by Convergent (the “Convergent Loan Amount”), with the  
 4 remaining \$6,466,638 to be provided by Aperture (the “Aperture Loan Amount”).  
 5 The Intercreditor Agreement provides that Aperture would be primarily interfacing  
 6 with the Borrower and outlines the distribution of payments received towards the  
 7 Loan Amount. As the senior lender under the Intercreditor Agreement, Aperture  
 8 was first in line to be paid and upon full payment of the Aperture Loan Amount,  
 9 Convergent would then begin to recoup the Convergent Loan Amount from the  
 10 Borrower.

11       15. The Intercreditor Agreement requires that upon full and final payment  
 12 of the Aperture Loan Amount, Aperture assign all rights, title, and interest held by  
 13 Aperture in the Loan Agreement to Convergent.

14 **IV. APERTURE’S ALLEGATIONS OF BORROWER’S DEFAULTS**  
 15                   **UNDER THE LOAN AGREEMENT**

16       16. Following the execution of the Loan Agreement, the Borrower and  
 17 MX2 began work on producing the Film. Shortly thereafter, Aperture claimed that  
 18 the Borrower had defaulted under the terms of the Loan Agreement. In hindsight,  
 19 Aperture’s intentions and motivations are clear. From the outset, Aperture had no  
 20 interest in a business relationship with Convergent as contemplated in the  
 21 Intercreditor Agreement. Rather, Aperture’s only goal was to purloin the credit  
 22 enhancement provided by Convergent’s subordinated investment by generating  
 23 massive fees, interest, and superficial default interest applicable to the Aperture  
 24 Loan Amount. Aperture sought to accomplish this goal by using trumped-up  
 25 defaults of the Loan Agreement, thereby triggering the Loan Agreement’s unlawful  
 26 and unenforceable default interest provision, and racking up excessive and  
 27 unnecessary legal fees chasing default interest, to which Aperture was not entitled.  
 28 By continuously adding default interest and various fees to the balance of the Loan

1 Amount, Aperture sought to create a situation where the Aperture Loan Amount  
 2 would never be paid off, thereby frustrating the purpose of the Intercreditor  
 3 Agreement and preventing the automatic assignment of the right to service the loan  
 4 to Convergent.

5       17. Aperture's spurious claims of default began on March 28, 2022, when  
 6 Aperture sent an e-mail to the Borrower claiming that the Borrower had triggered a  
 7 default event under the terms of the Loan Agreement. For example, Aperture  
 8 claimed that the Borrower triggered a default event when the Film's distributor for  
 9 the Russian territory (among others in the region) was an unacceptable distributor.  
 10 By unilaterally determining this distributor was unacceptable, Aperture claimed that  
 11 the gap amount was less than the maximum permitted gap amount, which Aperture  
 12 claims had a material adverse effect on the Borrower. Yet, afterwards, when this  
 13 purportedly "unacceptable distributor's" related entity located outside of Russia  
 14 wired \$320,000 to Aperture, Aperture accepted those funds. To the extent the gap  
 15 amount exceeded the maximum permitted gap amount, Aperture's acceptance of  
 16 \$320,000 reduced the gap amount far below the maximum permitted gap amount.  
 17 Even though Aperture has accepted this payment, and there has been no materially  
 18 adverse effect on the Borrower, Aperture continues asserting that the Borrower is in  
 19 default on this basis.

20       18. Another trumped-up default alleged by Aperture relates to the Film's  
 21 delivery date. The Film was scheduled to be delivered to (a) the Sales Agent by  
 22 August 21, 2022, (b) the Current Distributors by October 1, 2022, and (c) Aperture  
 23 within sixty (60) days of the expiration of the "Letter of Credit Agreement."  
 24 Pursuant to Section 1.1 of the Loan Agreement, MGIS had sole discretion to extend  
 25 those deadlines based upon a notice of exigencies. MGIS extended these deadlines  
 26 several times, ultimately extending the deadline for delivery to the Sales Agent to  
 27 December 19, 2022, and the deadline for delivery to the Current Distributors was  
 28 extended to January 29, 2023. The completion bond delivered the film prior to this

1 date. Notwithstanding the Borrower's timely delivery of the Film, Aperture  
 2 continues to assert that the Borrower failed to timely deliver the Film. Furthermore,  
 3 as the bond was successfully initiated by MGIS, and the Film was delivered  
 4 pursuant to the bond, the bond functioned as required and per agreement, thereby  
 5 avoiding any defaults related to, among other things, the budget or delivery of the  
 6 Film.

7       19. Perhaps the most brazen of Aperture's concocted defaults arises out of  
 8 Aperture's allegation that the Borrower rejected an offer of \$300,000 from a  
 9 distributor to distribute the Film in Latin America in November of 2021. Tellingly,  
 10 ***for the first time ever***, on or about October 24, 2023, one month after the Aperture  
 11 Loan Amount was satisfied, Aperture alleged that Borrower actually triggered a  
 12 default event on November 12, 2021, ***a full two years earlier***. This purported  
 13 default occurred less than one month after Aperture and the Borrower executed the  
 14 Loan Agreement, which was in an amount well-below the minimum value ascribed  
 15 for sales of the Film to the Latin America territory.

16       20. Despite clear language to the contrary, Aperture now contends that in  
 17 addition to the Borrower's requirement to obtain written approval from Aperture  
 18 prior to entering into any distribution agreements, the Borrower also was required to  
 19 obtain written approval from Aperture prior to rejecting any offers. First, *assuming*  
 20 *arguendo* that Aperture's interpretation of the Loan Agreement is correct, no offer  
 21 for distribution in the Latin America territory was ever conveyed to Borrower from  
 22 Particular Crowd, LLC, the distributor in question. Next, while some informal  
 23 discussions regarding the Latin American territory did occur in November of 2021,  
 24 Aperture was a full participant in those discussions and could have weighed in  
 25 regarding Borrower's purported rejection of the offer at that time; however,  
 26 Aperture agreed with Borrower that the amounts discussed at that point fell far  
 27 below being worthy of any serious consideration. Aperture only conveniently  
 28 contends this purported rejection was a default event as a desperate cash-grab for

1 default interest.

2       21. The various other claimed defaults by the Borrower under the Loan  
3 Agreement similarly appear to be concocted and meritless events of default.

4       22. Aperture's improper actions are not limited to trumped-up allegations  
5 of default, but also to incurring \$46,317 in unnecessary and excessive attorneys'  
6 fees, allegedly incurred in connection with the servicing of the Loan Agreement.  
7 On information and belief, the only work performed by Aperture's attorneys in  
8 connection with the Loan Agreement amounted to sending a handful of short letters  
9 alerting the Borrower to its purported defaults. Certainly, these activities do not  
10 warrant \$46,317 in claimed legal fees. When Aperture presented Convergent with  
11 this fact, while noting that payments under the Loan Agreement were used to pay  
12 for those fees, and notwithstanding Convergent's request for details, Aperture  
13 refused to provide Convergent with any context of the fees beyond that they were  
14 related to Aperture's servicing of the Loan Amount.

15 **V. APERTURE'S FRUSTRATION OF THE LOAN AGREEMENT**  
16           **TURNS INTO APERTURE BREACHING THE INTERCREDITOR**  
17           **AGREEMENT**

18       23. As the primary entity interfacing with the Borrower, Convergent relied  
19 upon Aperture to calculate, collect, and distribute all payments received by the  
20 Borrower in accordance with the terms of the Intercreditor Agreement. As outlined  
21 above, the Intercreditor Agreement provides that once Aperture was reimbursed for  
22 fees and costs and Aperture Loan Amount was paid in full, all payments would be  
23 utilized towards repayment to Convergent.

24       24. Aperture was paid in full no later than September 27, 2023. However,  
25 despite being paid in full, Aperture has breached the Intercreditor Agreement by not  
26 assigning the servicing of the Loan Agreement to Convergent. Aperture continues  
27 to assert rights under the Loan Agreement it no longer has. By not assigning the  
28 servicing of the Loan Agreement to Convergent, Aperture has received at least

1 \$128,034 in payments that, per the Intercreditor Agreement, should have been paid  
 2 to Convergent.

3       25. Aperture has also breached the Intercreditor Agreement by failing to  
 4 recognize Convergent's initiation of the buy-out procedure under the Intercreditor  
 5 Agreement. On October 17, 2023, Convergent sent Aperture a "Buy Out Notice",  
 6 and requested Aperture to prepare a calculation and breakdown of the purchase price  
 7 of the remainder of the Loan Amount pursuant to Section 12 of the Intercreditor  
 8 Agreement. Yet, on October 24, 2023, Aperture responded to Convergent's Buy-  
 9 Out Notice by not recognizing it, allowing Aperture to continue to attempt to make  
 10 erroneous claims of defaults the Loan Agreement, purloin proceeds entitled to  
 11 Convergent, and not releasing the Loan Agreement to be serviced by Convergent.  
 12 Aperture defended its improper actions by erroneously claiming that the Buy-Out  
 13 Notice may only be submitted if Aperture desired to assign its rights and interest to  
 14 a third party. Further, Aperture claimed that this alone was a condition precedent  
 15 that was required to occur before the Buy-Out Notice could be considered.  
 16 Ultimately, Aperture failed to provide its buy out calculations within the period  
 17 specified in the Intercreditor Agreement, breaching the same.

### **FIRST CLAIM FOR RELIEF**

#### **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

20       26. Convergent reincorporates by reference the allegations contained in  
 21 paragraphs 1 through 25 above as though fully set forth herein.

22       27. The Parties are parties to the Intercreditor Agreement and the  
 23 Intercreditor Agreement is binding and enforceable.

24       28. Pursuant to the terms of the Intercreditor Agreement, all payments  
 25 received from the Borrower were to be made either directly to Aperture or  
 26 subsequently provided to Aperture. .

27       29. The Intercreditor Agreement further provided that, upon satisfaction of  
 28 the Aperture Loan Amount, Aperture's rights, interest, and title under the Loan

1 Agreement would automatically transfer to Convergent, thereby allowing  
2 Convergent to step into the shoes of Aperture. Upon this automatic assignment to  
3 Convergent, Aperture is obligated to disgorge to Convergent all amounts received  
4 by Aperture after it had been paid in full.

5       30. As stated above, by concocting trumped-up defaults and paying its  
6 attorneys unnecessary and excessive fees, all adding to the balance of the Loan  
7 Amount, Aperture is effectively creating a scenario where (under its interpretation  
8 of the Loan Agreement) the balance of the Aperture Loan Amount will never be  
9 zero, and Aperture will continue to purloin for the sole benefit of Aperture while  
10 unnecessarily extending the date where Convergent will start to receive payments  
11 from Borrower.

12        31. By way of these actions, Aperture is interfering with Convergent's  
13 rights to receive the benefit of the Intercreditor Agreement, *i.e.*, service the Loan  
14 Agreement and recover amounts owed to Convergent by the Borrower.

15        32. In or around September 27, 2023, the Aperture Loan Amount was fully  
16 paid off and rights previously held by Aperture under the Loan Agreement should  
17 have automatically transferred to Convergent. Accordingly, all conditions precedent  
18 to the automatic assignment of Aperture's rights to Convergent have occurred.

19       33. As a result of Aperture's actions, Aperture has unfairly interfered with  
20 Convergent's right to receive the benefits under the Intercreditor Agreement and  
21 Loan Agreement. These breaches have prevented Convergent from receiving  
22 payments under the Loan Agreement occurring after September 27, 2023, the date  
23 Aperture was paid in full. These breaches have resulted in Convergent sustaining  
24 monetary damages in excess of \$128,034.

## **SECOND CLAIM FOR RELIEF**

## **(Breach of Contract)**

27       34. Convergent reincorporates by reference the allegations contained in  
28 paragraphs 1 through 33 above as though fully set forth herein.

35. A valid contract exists between Convergent and Aperture, as evidenced by the Intercreditor Agreement.

3        36. Aperture has materially breached the terms of the Intercreditor  
4 Agreement by (a) failing to remit payments exceeding \$128,034 to Convergent that  
5 were improperly received by Aperture after the Aperture Loan Amount had been  
6 satisfied, (b) continuing to assert rights under the Loan Agreement, when all  
7 remaining interest, with the exception of Aperture's retained rights, should have  
8 automatically transferred to Convergent, and (c) failing to timely provide a  
9 breakdown of the purchase price calculations in response to Convergent's Buy Out  
10 Notice.

11       37. Convergent sustained damages resulting from Aperture's breaches of  
12 the Intercreditor Agreement in an amount exceeding \$128,034.

## PRAYER FOR RELIEF

WHEREFORE, Convergent prays for judgment as follows:

1. Judgment be entered in favor of Convergent and against Aperture with respect to all causes of action in the Complaint;
2. That the Court awards Convergent monetary damages in an amount to be proven at trial;
3. That the Court awards Convergent for all costs and interests; and
4. That the Court award such other relief as it may deem just and proper.

23 | Dated: January 5, 2024

**BARNES & THORNBURG LLP**

By: /s/ Joseph M. Wahl

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Joseph Wahl

Shant N. Nashalian

Attorneys for Plaintiff CONVERGENT  
MEDIA IV LLC